THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. RUSSELL T. HAWLEY and HAWLEY INSURANCE, INC., Defendants.	)	CIVIL ACTION NO. 06-4087

COMPLAINT

The United States of America ("United States"), on behalf of the United States Department of Agriculture ("USDA") and for its Complaint, states and alleges as follows:

INTRODUCTION

1. Congress enacted legislation establishing the multi-peril crop insurance program. The United States alleges in this action that the Defendants' actions caused ineligible persons to secure Multi-Peril Crop Insurance ("MPCI") coverage and that these ineligible persons made false claims and received indemnity payments and premium subsidy benefits to which they were not entitled.

2. The United States seeks in this action treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733, and in the alternative, for damages for common law fraud and payment of mistake of fact.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1345, and 31 U.S.C. § 3730.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 31 U.S.C. § 3732.

THE PARTIES

5. Plaintiff is the United States of America.

6. Defendant Russell T. Hawley ("Hawley") is a resident of Iowa. Defendant Hawley was, during the relevant period, the President of Defendant Hawley Insurance, Inc. Defendant Hawley was also an insurance agent for Defendant Hawley Insurance, Inc. and sold MPCI policies that were underwritten by North Central Crop Insurance Company, now known as Farmer's Crop Insurance Alliance.

7. Defendant Hawley Insurance, Inc. (hereinafter both defendants are collectively referred to as "Hawley") is an Iowa Corporation with its principal place of business in Vail, Iowa, Crawford County.

SUMMARY OF USDA MULTI-PERIL CROP INSURANCE PROGRAM ELIGIBILITY REQUIREMENTS

8. Congress passed the Federal Crop Insurance Act ("FCIA") "to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance...." 7 U.S.C. § 1502. To carry out this purpose, Congress created the Risk Management Agency ("RMA"), which is an agency of the USDA, and

the Federal Crop Insurance Corporation ("FCIC"), which is a wholly-owned government corporation, to administer the FCIA. See 7 U.S.C. § 1503. Congress authorized the FCIC to use private insurance companies in providing crop insurance to the nation's farmers. See 7 U.S.C. § 1508. These private insurance companies sell and service crop insurance policies through crop insurance agents. The MPCI Program provides insurance coverage to farmers against natural crop losses.

9. The FCIC reinsures the MPCI policies sold by the insurance companies to farmers by agents acting on behalf of the insurance companies. The FCIC subsidizes the premiums and reimburses the private insurance companies for the indemnity payments made to the policyholders, assuming that the insurance company, insurance agent, and the farmer have followed all FCIC approved policies and procedures.

10. In order to obtain MPCI coverage, a farmer must sign an application for crop insurance and must submit the application through the crop insurance agent. The agent is responsible to adequately inform the farmer of the crop insurance policy provisions, including those provisions defining insurance eligibility. The farmer must certify, on the application filed with the agent, that the information in the application is true and complete. The application is an agreement between the insurance company, represented by the crop insurance agent, and the farmer.

11. As the representative agent of the insurance company, the crop insurance agent must ensure that the farmer making the application for the MPCI insurance coverage qualifies for federal crop insurance. The agent must ensure that the applicant

farmer owns a share of the insured crop as a landlord, owner-operator, or tenant.

12. Based upon the representations of the farmer and the agent, the application is subject to acceptance by the insurance company. The insurance company must determine that the application:

a. is for a person who has a bona fide interest (owner, operator, or tenant) in the crop;

b. shows the correct person or entity (individual partnership, estate, trust, etc.);

c. has been signed by a person having authority to enter into a binding contract; and

d. contains all the material information required to insure the crop.

13. In return for payment of the premium and subject to all the provisions in the policy, the insurance company agrees to provide crop insurance coverage to the farmer, and the insurance company issues a MPCI policy to the insured farmer. Insurance coverage applies only to the crop share of the individual, partnership, or corporation named on the application.

14. Each year the farmer must certify on an acreage report all planted acreage of the insured crop in which that farmer has an interest or share. The crop insurance agent shall carefully review with the farmer the original acreage report before it is submitted to the insurance company to ensure that the information required to be reported on the acreage report is entirely accurate.

15. The insurance company accepts insurance coverage on the reported crop acreage and prints a Schedule of Insurance, which reflects the information certified by the farmer and reviewed by the agent. When the Schedule of Insurance is received by the farmer, it must be reviewed for accuracy by the farmer and the agent, and if an error is found when compared to the acreage report, the agent must contact the insurance company and have the error corrected.

16. The Schedule of Insurance reflects the information from the Acreage Report certified by the farmer, and reviewed by the agent. The Schedule of Insurance reflects the total premium due and payable for the insured crop. This total premium consists of the portion paid by the farmer and the premium subsidy paid by FCIC.

17. When a properly insured crop is damaged by an event covered by the policy, the farmer notifies the insurance agent about the damage and the agent in turn notifies the insurance company. Upon notice of such damages, the insurance company sends a crop adjuster to inspect the crop to determine the amount of loss. Upon making a determination of damage, the crop adjuster completes a Production Worksheet, which indicates the cause of the crop damage, the amount of damage the field has sustained, and the amount of harvested and appraised production.

18. The insured farmer and the crop adjuster certify that the information contained on the Production Worksheet is true and complete and (a) the farmer has a specific interest in the insured crop; (b) the cause of damage to the insured crop; and (c) the amount of harvested and appraised production. The insured farmer and the crop adjuster further certify that the information on the Production Worksheet will be used to

determine the insured's loss, if any, for the damage to the insured's crops.

19. The insurance company pays indemnities on claims for damage to the insured farmer's crop. The FCIC then reimburses the insurance company for the indemnities it pays.

20. The insurance company shall not permit a crop adjuster to adjust a claim of a policyholder for which the policyholder's policy was sold by any member of the adjuster's family, as it would create a conflict of interest. Family includes, but is not limited to: parents, brothers, sisters, children, spouse, in-laws, grandchildren, aunts, uncles, cousins, and grandparents.

DEFENDANTS' FRAUDULENT CONDUCT

21. In 2000 and 2001, Hawley's actions caused ineligible persons to secure MPCI coverage and that these ineligible persons made false claims and received indemnity payments and premium subsidy benefits to which they were not entitled. Hawley's actions allowed Sydney and Stanley Winquist and Edward Marshall, or others representing themselves to be those respective individuals, to misrepresent material facts on their MPCI applications, acreage reports, and claim forms in order to secure insurance coverage and to receive indemnity payments and premium subsidy benefits on behalf of Sydney and Stanley Winquist and Edward Marshall, for other individuals. Sydney and Stanley Winquist and Edward Marshall were not eligible for MPCI indemnity payments and premium subsidy benefits as detailed below.

Sydney and Stanley Winquist's Crop Insurance Claims

2000 Crop Year

22. On or about February 24, 2000, two applications for crop insurance were signed for Sydney and Stanley Winquist by Sydney Winquist and an individual other than Stanley Winquist. The 2000 application was for crops grown in Melette and Tripp Counties, South Dakota. Based upon the information provided by Sydney Winquist and an individual other than Stanley Winquist, MPCI Policies 40-799-0003221 ("3221") and 40-799-0003220 ("3220") were issued to Syd and Stan Winquist.

23. On or about June 16, 2000, individual(s) other than Sid (sic) and Stan Winquist signed and caused to be submitted two Acreage Reporting Forms for MPCI policies 3221 and 3220. On the Acreage Reporting Forms, the individual(s) signing for Sydney and Stanley Winquist misrepresented that they had 100% insurable interest (50% each) in crops located in Melette and Tripp Counties, South Dakota, for crop year 2000, when in fact Sydney and Stanley Winquist had no insurable interest in the crops insured by MPCI policies 3221 and 3220, facts known or should have been known by Hawley.

24. On or about December 20, 2000, and February 1, 2001, Sydney and an individual other than Stanley Winquist signed and caused to be submitted four Production Worksheets which also misrepresented that the Winquists had 100% insurable interest (50% each) in crops located in Melette and Tripp Counties, South Dakota. Sydney and Stanley Winquist did not have any insurable interest in those crops, facts Hawley knew or should have known. Individual(s) other than Sydney and

Stanley Winquist certified that they knew the information provided on the Production Worksheets would be used to determine the amount of loss and whether indemnities should be paid under the two MPCI policies issued on behalf of Sydney and Stanley Winquist.

25. Mark Hinz, Hawley's cousin, performed the required quality assurance review of the claims for MPCI policies 3220 and 3221.

26. Based on the Production Worksheets signed and caused to be submitted by Sydney Winquist and an individual other than Stanley Winquist, the Winquists received indemnities, and these indemnities were further assigned to Ag Services of America, Inc. and were used to pay toward Donald Kluver's farm operating loan, from the crop insurance company in the amount of $62,369.00 for MPCI policy 3221 and $62,369.00 for MPCI policy 3220. FCIC reimbursed the crop insurance company for the indemnities it paid to the Winquists. FCIC also made premium subsidies for crop year 2000, on behalf of the Winquists totaling $10,401.00 for MPCI policy 3221 and $10,401.00 for MPCI policy 3220.

Edward Marshall's Crop Insurance Claims

2001 Crop Year

27. On or about March 14, 2001, an application for crop insurance for Ed Marshall was signed by an individual other than Edward Marshall. The 2001 application was for crops grown in Melette and Tripp Counties, South Dakota. Based upon the information provided by an individual other than Edward Marshall, MPCI policy 40-799-

0004148 ("4148") was issued to Ed Marshall, a fact unbeknownst to Edward Marshall, at that time.

28. On or about April 26, 2001, Hawley faxed to Mark and Sue Hoffman Assignments of Indemnity forms assigning Mark and Sue Hoffman's right to receive future indemnity payments on MPCI policies 40-799-0002632 and 40-799-0002631 to Ed Marshall.

29. On or about June 30, 2001, Edward Marshall signed and caused to be submitted an Acreage Reporting Form for MPCI Policy 4148. On the Acreage Reporting Form, Edward Marshall represented that Edward Marshall had a 100 percent interest in the insured crops in Melette and Tripp Counties, South Dakota. In fact, Edward Marshall had no insurance on those crops because his name had been forged on the application; therefore, no insurance policy and coverage should have been issued to Ed Marshall, facts known or should have been known by Hawley.

30. On or about December 5, 2001, Edward Marshall signed and caused to be submitted four Production Worksheets in order to secure an indemnity under MPCI policy 4148. Edward Marshall certified that he knew that the information he provided on the Production Worksheets would be used to determine the amount of loss and whether an indemnity should be paid under the MPCI policy that had been wrongly issued to Ed Marshall. On the Production Worksheets, Edward Marshall certified that he had a 100 percent interest in the acreage and the harvested production in the insured crop. In fact, Edward Marshall had no insurance on those crops because his name had been forged on the application; therefore, no insurance policy and coverage should have

been issued to Ed Marshall, facts known or should have been known by Hawley.

31. Based on the Production Worksheets signed and caused to be submitted by Edward Marshall, Edward Marshall received an indemnity from the crop insurance company in the amount of $132,836.00 for MPCI policy 4148. On January 12, 2002, FCIC reimbursed the crop insurance company for the amount of the indemnity paid to Ed Marshall on MPCI policy 4148. FCIC also paid premium subsidies for crop year 2001, on behalf of Ed Marshall totaling $27,124.00 for MPCI policy 4148.

COUNT ONE

False Claims Act, 31 U.S.C. § 3729(a)(1)

32. Plaintiff United States realleges and incorporates by reference, as if fully set forth herein, paragraphs 1 through 31 above.

33. By virtue of the specific acts described above, Defendants knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1).

34. As a result of Defendants' false or fraudulent acts described above, Plaintiff United States has suffered damages in an amount to be determined at trial.

COUNT TWO

False Claims Act, 31 U.S.C. § 3729(a)(2)

35. Plaintiff United States realleges and incorporates by reference, as if fully set forth herein, paragraphs 1 through 31 above.

36. By virtue of the specific acts described above, Defendants knowingly

made, used, or caused to be made or used false records or statements in order to get false or fraudulent claims paid or approved by the United States in violation of the False Claims Act, 31 U.S.C. § 3729(a)(2).

37. As a result of the acts described above, Plaintiff United States has suffered damages in an amount to be determined at trial.

COUNT THREE

False Claims Act, 31 U.S.C. § 3729(a)(3)

38. Plaintiff United States realleges and incorporates by reference, as if fully set forth herein, paragraphs 1 through 31 above.

39. By reason of the actions and conduct described herein, Defendants conspired with others to get false or fraudulent claims allowed or paid by the United States in that, Defendants entered into an agreement to submit and process false and fraudulent information in order for ineligible individuals to receive indemnities that would be ultimately reimbursed by the United States through the FCIC.

40. Each of the Defendants performed one or more acts to effect the object of the conspiracy, to submit and process false and fraudulent indemnity claims on behalf of ineligible individuals and ultimately to induce the United States, through the FCIC, to pay crop insurance indemnities.

41. As a result of Defendants' conspiracy to defraud the United States, Plaintiff has been damaged in an amount to be determined at trial.

COUNT FOUR

Common Law Fraud

42. Plaintiff United States realleges and incorporates by reference, as if fully set forth herein, paragraphs 1 through 31 above.

43. The false records or statements made or used by Defendants and their concealment of the true facts surrounding the individuals actually owning the Melette and Tripp County, South Dakota, crops in 2000 and 2001, as described above, constitute misrepresentations of material fact.

44. Defendants made these misrepresentations of material fact or caused them to be made with knowledge of their falsity or with reckless disregard for their truth.

45. Defendants made these misrepresentations of material fact, or caused them to be made, to Plaintiff United States knowing that the United States would rely on the accuracy of the representations in determining whether to pay crop insurance indemnities.

46. Defendants intended that the Plaintiff United States, acting through the FCIC, would act upon the false representations Defendants made or caused to be made.

47. Plaintiff United States justifiably relied upon and acted upon Defendants' false representations by paying the crop insurance indemnities as described above.

48. Defendants' actions have created a fraud upon Plaintiff United States.

49. Defendants' actions have caused Plaintiff United States to suffer damages in an amount to be determined at trial.

COUNT FIVE

Payment Under Mistake of Fact

50. Plaintiff United States realleges and incorporates by reference, as if fully

set forth herein, paragraphs 1 through 31 above.

51. Plaintiff United States paid crop insurance indemnities and premium subsidy benefits as described above.

52. Plaintiff United States' erroneous beliefs were material to the amount of money the United States paid to the ineligible individuals as described above.

53. Because of these mistakes of fact, Defendants have received money from Plaintiff United States to which they were not entitled and, as described above, Plaintiff United States has paid crop insurance indemnities to ineligible individuals, as detailed above, that should not have been paid.

54. By reason of the erroneous payments made by the United States, Plaintiff United States is entitled to damages in the amount of the payments it erroneously made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States demands and prays that judgment be entered in its favor and against Defendants as follows:

1. Under Count I, for treble damages and for civil penalties up to $11,000 for each false or fraudulent claim submitted or caused to be submitted by Defendants;

2. Under Count II, for treble damages and for civil penalties up to $11,000 for each materially false record, statement, or representation knowingly made, used, or caused to be made or used to get a false or fraudulent claim allowed or paid;

3. Under Count III, for treble damages and for civil penalties up to $10,000 for each false or fraudulent claim and for each materially false record, statement or

representation knowingly made, used, or caused to be made or used during the course of defendant's conspiracy to defraud the United States.

4. Under Count IV, for compensatory and punitive damages in an amount to be determined at a trial of this action plus interest and costs;

5. Under Count V, for damages in an amount to be determined at the trial of this action, plus interest and costs;

6. For a trial by jury and for any and all other relief to which the United States may be entitled.

Respectfully submitted,

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